

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

MARS SNACKFOOD US, LLC

Plaintiff,

- against -

CERES COMMODITIES GROUP, LLC

Defendant.

----- X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

08 Civ. 5265 (GL)

**AFFIDAVIT FOR
JUDGMENT BY DEFAULT**

David J. Stone, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court, and am associated with the firm of Greenberg Traurig LLP, attorneys for plaintiff in the above-entitled action, and I am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in support of plaintiff's application for the entry of a default judgment against defendant. The party against whom a notation of default is sought is not an infant, in the military or an incompetent person.

3. This is an action to recover \$444,902.94 owed by defendant to plaintiff for breach of contract, goods had and received, open account and account stated.

4. Jurisdiction of the subject matter of this action is based on 28 U.S.C. § 1332, Diversity jurisdiction.

5. This action was commenced on June 9, 2008 by the filing of the summons and complaint (a copy of the Summons and Complaint are attached hereto as Exhibit A). A copy

of the summons and complaint was served on the defendant on June 10, 2008, by personal service on Roland G. Sanchez, Chief Executive Officer, Ceres Commodities Group LLC, and proof of service by the Special Process Server was filed. (A copy of the Proof of Service is attached hereto as Exhibit B.) The defendant has not answered the complaint and the time for the defendant to answer the complaint has expired. (A copy of the Clerk's Certificate is attached hereto as Exhibit C.)

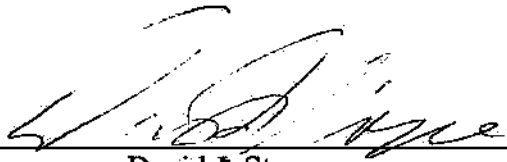
6. This action seeks judgment for the liquidated amount of \$444,902.94, plus interest at 9% as set forth in the attached Annex A for a total as of August 6, 2008 of \$471,321.24, as shown by the annexed Statement, which is justly due and owing, and no part of which has been paid except as therein set forth.

7. An inquest on the amount of damages is not necessary. *Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., Div. of Ace Young Inc.*, 109 F.3d 105, 111 (2d Cir. 1997). Rule 55(b)(2) of the Federal Rules of Civil Procedure provides that, in order to determine the amount of damages in the context of a default judgment, "the court may conduct . . . a hearing." The Second Circuit has held that, under Rule 55(b)(2), "it [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in the default judgment." *Fustok v. ContiCommodity Services, Inc.*, 873 F.2d 38, 40 (2d Cir.1989); *see also Tamarin v. Adam Caterers, Inc.*, 13 F.3d 51, 54 (2d Cir.1993) ("not necessary for the district court to hold a hearing to fix damages after a default judgment had been entered where the court had 'relied upon detailed affidavits and documentary evidence supplemented by the District Judge's personal knowledge of the record gained during four years involvement with the litigation ...' "); *Action S.A. v. Marc Rich & Co., Inc.*, 951 F.2d 504, 508 (2d Cir.1991) (where district judge was "inundated with affidavits, evidence, and oral presentations" a full evidentiary hearing was not necessary).

8. Plaintiff seeks damages in the amount of unpaid invoices for goods received by defendant in the amount of \$444,902.94, plus interest. (Copies of the subject invoices are attached hereto as Exhibit D.) The amount of Plaintiff's damages are clear from the face of the invoices, and no inquest is necessary.

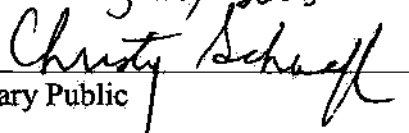
9. The disbursements sought to be taxed have been made in this action or will necessarily be made herein.

WHEREFORE, plaintiff requests the entry of Default and the entry of the annexed Judgment against defendant.



David J. Stone

Sworn to before me this 13th
day of August, 2008



Notary Public

CHRISTY SCHAEFFER
Notary Public, State of New York
No. 31-4769958
Qualified in New York County
Commission Expires August 31, 2010

Annex A

Unpaid Invoices:

- (1) Invoice # 44: Principal: \$ 55,915.43 Simple Interest (9%): \$4,880.73 (from 8/18/07)**
 - (2) Invoice #68: Principal: \$222,404.00 Simple Interest (9%): \$10,693.67 (from 1/24/08)**
 - (3) Invoice #121: Principal: \$166,583.52 Simple Interest (9%): \$10,843.90 (from 11/16/07);**
- for a total principal amount of \$444,902.95 and a total interest amount of \$26,418.30.**

'08 CIV 5265 COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

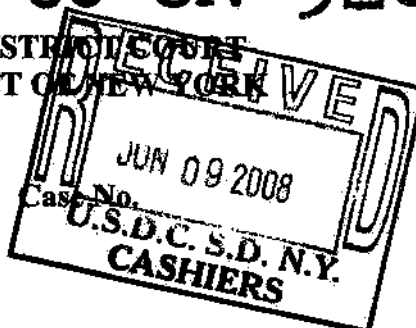
-----X
MARS SNACKFOOD US, LLC,

Plaintiff,

v.

CERES COMMODITIES GROUP, LLC,

Defendant.
-----X



COMPLAINT FOR BREACH
OF CONTRACT

Plaintiff Mars Snackfood US, LLC (formerly known as Masterfoods USA) ("Mars"),
alleges as follows against Defendant Ceres Commodities Group ("Ceres"):

INTRODUCTION

1. This is an Action for breach of contract, goods had and received, and open account, in which Plaintiff Mars sues Defendant Ceres for non-payment of three invoices representing shipments of cocoa beans sold by Plaintiff to Defendant, for which Plaintiff is owed the aggregate amount of \$444,902.94.

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1332, because Plaintiff and Defendant are corporate citizens of different States and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

3. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(a)(1) because the defendant resides in this District.

PARTIES

4. Plaintiff Mars is a limited liability company organized and existing under the laws of the State of Delaware. Its corporate headquarters are in Hackettstown, New Jersey. Plaintiff is a member of the group of companies ultimately owned by Mars, Incorporated, located in McLean, Virginia. Plaintiff is a manufacturer of, *inter alia*, chocolate confectionery products, and therefore is a buyer and occasional seller of cocoa beans.

5. On information and belief, Defendant Ceres is a New York corporation, with headquarters in New York, New York. Ceres is a commodity trader and broker, with whom Mars has done business for a number of years.

FACTS

6. On or about May 7, 2007, Defendant placed an order with Plaintiff for 12.357 metric tons of Hispaniola cocoa beans, at \$4,525.00 per metric ton, for a total of \$55,915.42. Goods conforming in all respects to the order were duly shipped, and an invoice (#44) was issued on August 8, 2007. The terms of payment of the invoice were net ten days. Defendant has failed to pay this amount.

7. On or about June 27, 2007, Defendant placed an order with Plaintiff for 97.760 metric tons of Sanchez cocoa beans, at \$2,275.00 per metric ton, for a total of \$222,404.00. Goods conforming in all respects to the order were duly shipped, and an invoice (#68) was issued on January 14, 2008. The terms of payment of the invoice were net ten days. Defendant has failed to pay this amount.

8. On or about October 31, 2007, Defendant placed an order with Plaintiff for 79.920 metric tons of Haitian cocoa beans, at \$2,160.00 per metric ton, for a total of

\$166,583.52. Goods conforming in all respects to the order were duly shipped, and an invoice (#121) was issued on November 6, 2007. The terms of payment of the invoice were net ten days. Defendant has failed to pay this amount.

9. The total amount in which Defendant remains indebted to Plaintiff is the sum of the three invoices referenced above, or \$444,902.94.

10. Repeated written and oral demands for payment of the aforementioned debt have been ignored or rebuffed by Defendant.

COUNT ONE: BREACH OF CONTRACT

11. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

12. According to the terms of the contract between Plaintiff and Defendant, by which Plaintiff performed by delivering fully merchantable cocoa beans to Defendant as recited above, Defendant was obligated to pay the invoice amount for each shipment. In the specific instances noted herein, Defendant failed to pay those amounts.

13. The failure or refusal of Defendant to pay for the shipments of cocoa beans delivered to it by Plaintiff constitutes a breach of the contract between the parties, causing Plaintiff injury in the amount of \$444,902.94.

COUNT TWO: GOODS HAD AND RECEIVED

14. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

15. As from the date of receipt of each of the shipments of cocoa beans noted above, Defendant has had possession and use of the fully merchantable cocoa beans sold to it by Plaintiff, and has been able to profit thereby, although it has failed to pay for those goods.

16. The failure or refusal of Defendant to pay for the shipments of cocoa beans delivered to it by Plaintiff, although it has received them and has taken possession of them, has caused Plaintiff injury in the amount of \$444,902.94.

COUNT THREE: OPEN ACCOUNT

17. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

18. Plaintiff sold goods, including cocoa beans, to Defendant on an open account basis.

19. The unliquidated balance of the account between Plaintiff and Defendant is currently \$444,902.94, representing the three unpaid invoices detailed above.

COUNT FOUR: ACCOUNT STATED

20. The allegations of paragraphs 1-10, *supra*, are re-alleged as if set forth in full herein.

21. Plaintiff sent invoices to Defendant in the amount of 444,902.94.

22. Defendant never objected to the amount of the invoices and never paid the invoices.

23. Defendant has harmed Plaintiff in the amount of \$44,902.94.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mars Snackfood US, LLC, prays for relief against Defendant as follows:

- a) ASSUME jurisdiction over this Action;
- b) AWARD damages to Plaintiff and against Defendant in the amount of \$444,902.94, plus pre-judgment and post-judgment interest as allowed by law; and

c) GRANT to Plaintiff such additional relief as to the Court shall appear just and equitable.

June 9, 2008
New York, New York

GREENBERG TRAURIG, LLP

By: 

David J. Stone (DS-0232)
MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
Email: Dstone@gtlaw.com

and

Steven M. Schneebaum
GREENBERG TRAURIG LLP
2101 L Street, N.W.
Washington, D.C. 20037
Tel.: (202) 530-8544
Email: schneebaums@gtlaw.com

Attorneys for Mars Snackfood US, LLC.

ORIGINAL FILE COPY

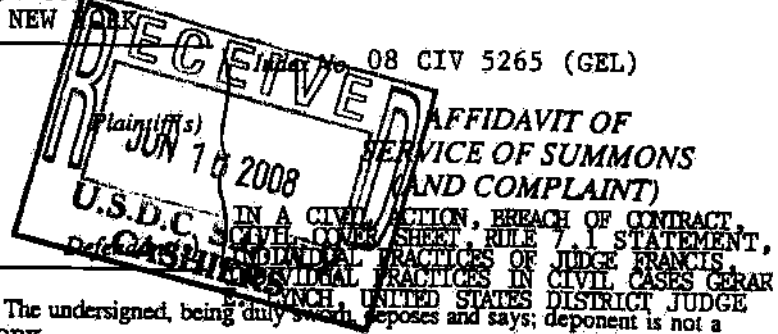
B 151—Affidavit of Service of Summons or Subpoena: Personal or Alternative
Methods: Corp. or Ind.; Military Service, 10 pt. type, 1-95COURT UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COUNTY OF

MARS SNACKFOOD US LLC,

against

CERES COMMODITY GROUP, LLC,



STATE OF NEW YORK, COUNTY OF NEW YORK

SS: The undersigned, being duly sworn, deposes and says; deponent is not a

party herein, is over 18 years of age and resides at CORONA, NEW YORK

That on 6/17/08

at 3:15 P.M., at 420 MADISON AVENUE, NEW YORK, NEW YORK

deponent served the within summons, and complaint on

defendant therein named.

IN A CIVIL ACTION, BREACH OF CONTRACT, CIVIL COVER SHEET, RULE 7.1 STATEMENT, INDIVIDUAL PRACTICES OF JUDGE FRANCIS, INDIVIDUAL PRACTICES IN CIVIL CASES GERARD E. LYNCH, UNITED STATES DISTRICT JUDGE

CERES COMMODITY GROUP, LLC

INDIVIDUAL

by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

1. ☐

CORPORATION

a FOREIGN LIMITED LIABILITY COMPANY (FLLC) by delivering thereat a true copy of each to ROLAND G. SANCHEZ

2. ☒

personally, deponent knew said FLLC so served to be the FLLC described in said summons as said defendant and knew said individual to be CHIEF EXECUTIVE OFFICER/MANAGER thereof.

SUITABLE AGE PERSON

by delivering thereat a true copy of each to a person of suitable age

3. ☐

and discretion. Said premises is defendant's—actual place of business—dwelling place—usual place of abode—within the state.

AFFIXING TO DOOR, ETC.

by affixing a true copy of each to the door of said premises, which is defendant's—actual place of business—dwelling place—usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age

4. ☐

and discretion thereat, having called there

MAILING TO RESIDENCE
USE WITH 3 OR 4SA. ☐MAILING TO BUSINESS
USE WITH 3 OR 4SB. ☐DESCRIPTION
USE WITH 1, 2, OR 3☒

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known residence, at and deposited said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class post paid envelope properly addressed to defendant at defendant's actual place of business, at

in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant.

<input checked="" type="checkbox"/> Male	<input checked="" type="checkbox"/> White Skin	<input type="checkbox"/> Black Hair	<input type="checkbox"/> White Hair	<input type="checkbox"/> 14-20 Yrs.	<input type="checkbox"/> Under 5'	<input type="checkbox"/> Under 100 Lbs.
<input type="checkbox"/> Female	<input type="checkbox"/> Black Skin	<input type="checkbox"/> Brown Hair	<input type="checkbox"/> Balding	<input type="checkbox"/> 21-35 Yrs.	<input type="checkbox"/> 5'0"-5'3"	<input type="checkbox"/> 100-130 Lbs.
	<input type="checkbox"/> Yellow Skin	<input type="checkbox"/> Blonde Hair	<input type="checkbox"/> Mustache	<input checked="" type="checkbox"/> 36-50 Yrs.	<input type="checkbox"/> 5'4"-5'8"	<input type="checkbox"/> 131-160 Lbs.
	<input type="checkbox"/> Brown Skin	<input checked="" type="checkbox"/> Gray Hair	<input type="checkbox"/> Beard	<input type="checkbox"/> 51-65 Yrs.	<input checked="" type="checkbox"/> 5'9"-6'0"	<input checked="" type="checkbox"/> 161-200 Lbs.
	<input type="checkbox"/> Red Skin	<input type="checkbox"/> Red Hair	<input type="checkbox"/> Glasses	<input type="checkbox"/> Over 65 Yrs.	<input type="checkbox"/> Over 6'	<input type="checkbox"/> Over 200 Lbs.

Other identifying features:

USE IN
NYC CIVIL CT.☐

The words "CONSUMER CREDIT TRANSACTION" were prominently displayed at the top of the summons(es) and the additional legend was printed in not less than 12 point bold upper case type on the summons(es) pursuant to 22 NYCRR §208.6(d) and (f).

MILITARY
SERVICE☐

I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Sworn to before me on
6/13/08

JOHN DICANIO
Notary Public, State of New York
No. 01D1497768
Qualified in Westchester County
Commission Expires Feb. 11, 2011

PRINT NAME: JUAN D. AGUIRRE
SIGNATURE: [Signature]

License No. 843839

FILE COPY**UNITED STATES DISTRICT COURT**

Southern

District of

New York

Mars Snackfood US LLC,

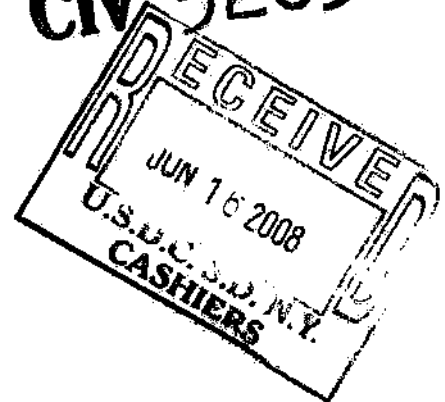
JUDGE LYNCH**SUMMONS IN A CIVIL ACTION**

CASE NUMBER: 08 (CV)

Ceres Commodity Group, LLC,

08 CIV 5265

TO: (Name and address of Defendant)

Ceres Commodity Group
420 Madison Avenue
New York, New York 10017**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)David J. Stone
Greenberg Traurig LLP
200 Park Avenue
New York, New York 10166

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON**JUN 09 2008**

CLERK

DATE

(By) DEPUTY CLERK

A handwritten signature in cursive script, appearing to read "Patricia Custer".

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL \$
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

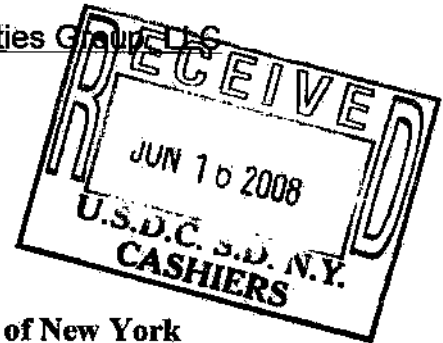
(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

FILE COPY**Service of Process:**

1:08-cv-05265-GEL MARS Snackfood US, LLC. v. Ceres Commodities Group, LLC
ECF

U.S. District Court

United States District Court for the Southern District of New York

**Notice of Electronic Filing**

The following transaction was entered by Stone, David on 6/13/2008 at 7:04 PM EDT and filed on 6/13/2008

Case Name: MARS Snackfood US, LLC. v. Ceres Commodities Group, LLC
Case Number: 1:08-cv-5265
Filer: MARS Snackfood US, LLC.
Document Number: 3

Docket Text:

AFFIDAVIT OF SERVICE of Summons and Complaint. Ceres Commodities Group, LLC served on 6/10/2008, answer due 6/30/2008. Service was accepted by Roland G. Sanchez, CEO/ Manager. Document filed by MARS Snackfood US, LLC.. (Attachments: # (1) Exhibit Summons)(Stone, David)

1:08-cv-5265 Notice has been electronically mailed to:

David Jay Stone dstone@gtlaw.com, gtcourtalert@gtlaw.com

1:08-cv-5265 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=6/13/2008] [FileNumber=4698079-0]
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Document description:Exhibit Summons

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=6/13/2008] [FileNumber=4698079-1]
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

MARS SNACKFOOD US, LLC

Plaintiff,

- against -

CERES COMMODITIES GROUP, LLC

Defendant.

----- X

08 Civ. 5265 (Gel) (GL)

CLERK'S CERTIFICATE

I, J. MICHAEL MCMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on June 9, 2008 with the filing of a summons and complaint, a copy of the summons and complaint was served on defendant by serving the NYS Secretary of State and Ceres Commodities Group, LLC, by hand, and proof of such service thereof was filed on June 17, 2008.

I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect to the complaint herein. The default of the defendant is hereby noted.

Dated: New York, New York
Aug 2, 2008

J. MICHAEL MCMAHON
Clerk of the Court

By: *h*
Deputy Clerk

Masterfoods USA
 A Mars, Incorporated Company
 800 High Street
 Hackettstown, NJ 07480
 USA
 Phone: (908) 852-1000 Fax: (908) 850-7523

Invoice

CERES COMMODITIES GROUP
 Attn: ROLAND SANCHEZ

420 MADISON AVE.
 NEW YORK, NY 10017

Shipped:
 CERES COMMODITIES GROUP

420 MADISON AVE.
 NEW YORK, NY 10017

Invoice Number 44
 Invoice Date 8/8/2007
 P.O. Number
 Order Date 5/7/2007

Terms:

Contact Name ROLAND SANCHEZ
 Phone Number: (212) 549-3299
 Fax Number: (212) 980-3537

Ship Date 5/7/2007

Ship Via

Product Line Total	Description	Quantity In	MTs	Unit Price	MTs
C.B.HISPANOLA	2381	12.357	\$4,525.0000	MT	\$55,915.43
		Total Quantity	12.357	MTs	
				Subtotal	\$55,915.42
				Freight Charge	\$0.00
				Sales Tax	\$0.00
				Order Total	\$55,915.42
				Total Payments	
				Total Due	\$55,915.42

Attn: /

Thank you for placing your order with us!

Masterfoods USA
 A Merck, Incorporated Company
 800 High Street
 Hackettstown, NJ 07480
 USA
 Phone: (908) 852-1000 Fax: (908) 850-7523

Invoice

CERES COMMODITIES GROUP
 Attn: ROLAND SANCHEZ
 420 MADISON AVE.
 NEW YORK, NY 10017

Shipped:
 CERES COMMODITIES GROUP

420 MADISON AVE.
 NEW YORK, NY 10017

Invoice 68
 Invoice 1/14/2008
 P.O.
 Order 6/27/2007

Terms:

Contact Name ROLAND SANCHEZ
 Phone (212) 549-3299
 Fax Number (212) 980-3537

Ship

Ship Via

Product Line Total	Description	Quantity In	MTs Unit	MTs
C.B. SANCHEZ	2389	97.760	\$2,275.0000 MT	\$222,404.00
	Total	97.760 MTs	Subtotal	\$222,404.00
			Freight	\$0.00
			Sales Tax	\$0.00
			Order Total	\$222,404.00
			Total Payments	
			Total Due	\$222,404.00

Attn: /

Masterfoods USA
 A Mars, Incorporated Company
 800 High Street
 Hackettstown, NJ 07480
 USA
 Phone: (908) 852-1000 Fax: (908) 850-7523

Invoice

CERES COMMODITIES GROUP
 Attn: ROLAND SANCHEZ

420 MADISON AVE.
 NEW YORK, NY 10017

Shipped:

CERES COMMODITIES GROUP

420 MADISON AVE.
 NEW YORK, NY 10017

Invoice Number 121Final
 Invoice Date 11/6/2007
 P.O. Number
 Order Date 10/31/2007

Terms:

Contact Name ROLAND SANCHEZ
 Phone Number: (212) 549-3299
 Fax Number: (212) 980-3537

Ship Date

Ship Via

Product Line Total	Description	Quantity in	MTs	Unit Price	MTs
C.B. HAITI	Delivery order # 2424	77.12	\$2,160.0000	MT	\$166,583.52
	Total Quantity	79.920	MTs	Subtotal	166,583.52
				Freight Charge	\$0.00
				Sales Tax	\$0.00
				Order Total	166,583.52
				Total Payments	
				Total Due	166,583.52

	X	(GCL)
MARS SNACKFOOD US, LLC,	:	Case No. 08 Civ. 5265 (GL)
	:	
Plaintiff,	:	
	:	
v.	:	DEFAULT JUDGMENT
	:	
CERES COMMODITIES GROUP, LLC,	:	
	:	
Defendant.	:	
	:	
	:	
	X	

(1) Invoice # 44: Principal: \$ 55,915.43 Simple Interest (9%): \$4,880.73 (from 8/18/07)

(2) Invoice #68: Principal: \$222,404.00 Simple Interest (9%): \$10,693.67 (from 1/24/08)

(3) Invoice #121: Principal: \$166,583.52 Simple Interest (9%): \$10,843.90 (from 11/16/07)

for a total principal amount of \$444,902.94 and a total interest amount of \$26,418.30, plus costs and disbursements of this action in the amount of \$350.00, amounting in all to \$471,671.24.

Dated: New York, New York

U.S.D.J.

This document was entered on the docket on

_____.